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November 9, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW, Room TWB204
Washington, D.C. 20554

**Re: Pending Petition for Rulemaking
Television Allotments
Knoxville, TN**

Dear Ms. Salas:

On July 17, 2000, there was filed with the Commission a "Petition for Rulemaking" proposing the allocation of NTSC Channel 25 to Knoxville, TN in substitution for NTSC Channel 26 which had been rendered unavailable for assignment as an NTSC facility by reason of its allocation to Knoxville as a DTV allotment. The petitioning parties subsequently filed, on June 20, 2001, a "Supplement to Petition for Rulemaking and Further Allotment Proposal." The subsequent submission demonstrated, inter alia, that all then existing potential impediments to the requested Channel 25 allocation had been resolved and proposed, in the alternative, the allocation of DTV Channel 7 to Knoxville in the event that the Commission were disinclined to allocate NTSC Channel 25 to Knoxville.

On behalf of the petitioning parties, there is transmitted herewith in quadruplicate, for association with the above-described submissions, their "Further Supplement to Petition for Rulemaking." In material part, the further supplement addresses and disposes of a recently presented interference consideration related to the prospective operation of ETV Station WUNF-DT, Asheville, NC.

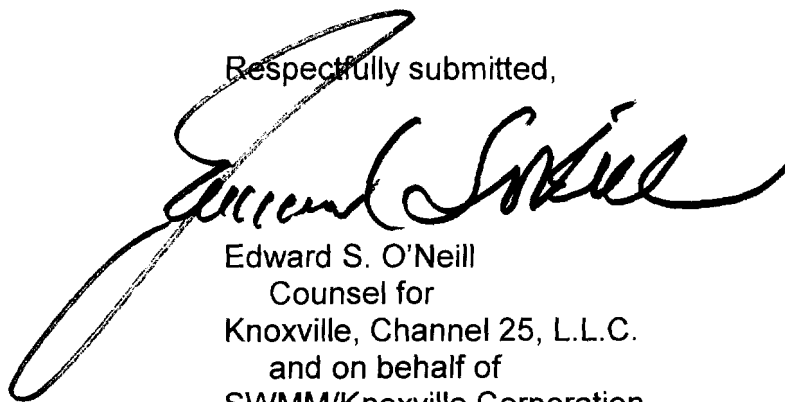
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FLETCHER, HEALD & HILDRETH, P.L.C.

Magalie Roman Salas, Esquire
November 8, 2001
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Please advise the undersigned should there be any questions respecting this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward S. O'Neill", written over the typed name.

Edward S. O'Neill
Counsel for
Knoxville, Channel 25, L.L.C.
and on behalf of
SWMM/Knoxville Corporation
and
Channel 26, Ltd.

Enclosure

cc (w/encl.): Ms. Nazifa Naim, FCC

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.606(b)) MM Docket No. _____
TV Table of Allotments) RM No. _____
TV Broadcast Stations)
Knoxville, Tennessee)

To: Chief, Video Services Division

FURTHER SUPPLEMENT TO PETITION FOR RULEMAKING

SWMM/Knoxville Corporation ("SWMM"), Channel 26, Ltd., and Knoxville Channel 25, L.L.C. ("KC25") (collectively, "Petitioners"), through their respective counsel, hereby further supplement their pending Petition for Rulemaking, which was filed on July 17, 2000 ("Petition"). In support of this submission, the following is stated:¹

I. Preliminary Statement.

In their original Petition herein, Petitioners proposed the allocation of NTSC Channel 25 to Knoxville, TN, and the ultimate grant to KC25 of a construction permit to operate on that channel pursuant to Petitioners' universal settlement.² It was shown therein that the proposal complied with all relevant criteria with the sole exception of a minor short-spacing to one station which would not in any event implicate prohibited

¹ On June 20, 2001, Petitioners filed their "Supplement to Petition for Rulemaking and Further Allotment Proposal" which will hereinafter be referred to as the "Initial Supplement."

² The background and relevant history compelling the Petitioners' proposal is fully described at pages 2-3 of the Petition and pages 2-4 of the Initial Supplement.

interference as a practical matter and which plainly warrants waiver on a number of grounds.

The subsequently filed Initial Supplement identified two other potential interference circumstances which had emerged after the Petition filing, *i.e.*, those relating to (1) LPTV station WPDP-LP, Cleveland, TN, and (2) WKPT-LP, Kingsport, TN. The Initial Supplement demonstrated that both concerns had been resolved in the public interest and that neither remained an impediment to the channel allocation proposed by the Petition. In brief, it was shown in those respects that the licensee of Station WPDP-LP, Cleveland, had filed an application to modify its assigned channel from Channel 25 to Channel 38 (thus potentially obviating any conflicts with Petitioners' proposal for Channel 25 at Knoxville),³ and that Petitioners had entered into an agreement with Station WKPT-LP, Kingsport, whereby, pursuant to extensive analyses by the parties, they agreed to accept such minimal interference, if any, as each of their operations on Channel 25 may occasion as to the other and agreed further that such accord would be in the interest of the viewing public.

The Initial Supplement also proposed, in the alternative, the allocation of DTV Channel 7 to Knoxville, for use by KC25, in the event that the Commission declined to allocate NTSC Channel 25 to Knoxville as initially requested by Petitioners. Although such alternative allocation was shown to satisfy -- and still satisfies -- all relevant technical and legal considerations (Initial Supplement, pp. 19-21), it is submitted that that proposal

³ By action of July 20, 2001, the LPTV Branch approved the underlying settlement agreement between Petitioners and Station WPDP-LP and proposed the latter's application to modify its operation to Channel 38 for expeditious grant. That application was granted on September 18, 2001, thus fully resolving that interference concern.

need not be reached at this point given that the basic proposal for the allocation of NTSC Channel 25 is shown to be grantable.

Upon the filing of the Initial Supplement, it was reasonably apparent that Petitioners' Petition was consistent with all relevant considerations and that the expeditious issuance of a related NPRM was fully warranted.⁴ Whereas that circumstance still obtains, it is necessary at this point to take cognizance of a relatively recent occurrence which presented further interference considerations but, as will be shown, is not a bar to the issuance of the requested NPRM and ultimate authorization to KC25 to provide a new television service to Knoxville on NTSC Channel 25.

The occurrence in question relates to the filing on July 31, 2001 of an application to modify the construction permit previously granted to the University of North Carolina to operate Station WUNF-DT on DTV Channel 25 at Asheville, NC.⁵ That proposal is facially in conflict with the KC25 proposal to operate on NTSC Channel 25 at Knoxville, TN. However, it is shown in the attached Engineering Statement of Kevin T. Fisher (Appendix A) that the respective operations on Channel 25 may in fact be conducted without either causing prohibited interference to the other.⁶ Of decisional significance in that respect is the demonstrated fact that the proposed KC25 operation would cause no more than 0.19% predicted interference to the modified WUNF-DT operation, that level being within the rounding tolerance consistently applied by the

⁴ The KC25 application for NTSC Channel 26 at Knoxville -- a seminal event in this proceeding -- was filed more than a half decade ago (File No. BPCT-19960920LJ).

⁵ File No. BMPEDT-20010731AAG (modifying BPDET-20000207AAC).

⁶ The original Petition herein demonstrated that the there proposed KC25 operation would in fact protect the then-extant authorization for Station WUNF-DT (Petition, p. 12, Note 19, and Exhibit A). The interference considerations now presented are occasioned exclusively by the subsequent filing of the WUNF-DT modification application.

Commission. Appendix A also demonstrates that such interference area as may obtain on a predicted basis is in exceptionally mountainous terrain where interference would likely not result as a practical matter.

The above-noted protection of Station WUHF-DT implicates a waiver of the provisions of Section 73.685(e) of the Commission's rules respecting antenna suppression ratios and such waiver is hereby requested. The compelling warrant therefor is manifest and was in part addressed in the original Petition incident to the suppression ratio waiver there implicated as to the then-extant authorization for Station WUNF-DT. *Id.*

II. The Proposed Allotment of Channel 25 at Knoxville Will Not Cause Prohibited Interference to Station WUNF-DT, Asheville, North Carolina.

As demonstrated in Appendix A, the proposed Channel 25 NTSC facility at Knoxville, Tennessee, would cause only 0.26% predicted interference to the population within the service contour of co-channel Station WUNF-DT, Asheville, North Carolina, as authorized by construction permit BPEDT-20000207AAC. *See* Appendix A, p. 1 and Exhibit B thereto. It is there also shown that the proposed Channel 25 NTSC facility at Knoxville could cause even less predicted interference -- only 0.19% -- to the facilities specified in a pending modification application for Station WUNF-DT (File No. BMPEDT-20010731AAG). *Id.* at 2 and Exhibits D and E.⁷ These predicted interference levels are well within the Commission's rounding tolerance and therefore are permissible.⁸

⁷ The technical specifications of Petitioners' revised proposal appear at the "Tech Box" (FCC Form 301, pp. 14-15) appended to Appendix A.

⁸ *See Report and Order* in MM Docket No. 00-10, *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6386 ¶74 (2000) (NTSC applicants allowed a rounding tolerance of 0.5% in protecting DTV stations), *recon. granted in part on other grounds*, 16 FCC Rcd 8244 (2001).

The minimal extent to which the proposed Knoxville NTSC station is predicted to cause interference to Station WUNF-DT is demonstrated by the interference analysis concerning those persons who reside within the service contour of WUNF-DT's companion analog station, WUNF-TV, Channel 33, Asheville. Based upon the facilities authorized in WUNF-DT's existing construction permit, there are 112 persons who reside within WUNF-TV's Grade B contour who, if they were to view WUNF-DT, are predicted to receive interference from the proposed NTSC station at Knoxville. Appendix A, p. 2. There are even fewer people who are predicted to receive interference from the proposed Knoxville station if the pending modification application for WUNF-DT is granted. Based on the technical facilities specified in WUNF-DT's modification application, there currently are only 29 people who reside in a portion of Jefferson County, Tennessee, who are able to receive the off-air analog signal of Station WUNF-TV and who, if they were to view the off-air digital signal of Station WUNF-DT, are predicted to receive interference from the proposed new analog station at Knoxville. *Id.*

Furthermore, it is very unlikely that any of those few persons residing within the predicted interference area would suffer any actual interference as a result of the proposed Knoxville station because they are unlikely to watch WUNF-DT. Station WUNF-DT, just as its analog counterpart, WUNF-TV, will air principally PBS programming when it goes on the air. However, Station WSJK-DT, Sneedville, Tennessee, also is a PBS affiliate and is substantially closer to the predicted interference area than WUNF-DT. *See* Appendix A, pp. 2-3. Indeed, the predicted interference area is confined to portions of Greene, Hamblen, and Jefferson counties, all of which are located in Tennessee. *Id.* at 2, and Exhibits B and C. The WSJK-DT transmitter is located approximately only ten miles from the predicted interference area and will place a substantially stronger digital signal over

these three Tennessee counties than WUNF-DT.⁹ Therefore, to the extent those persons residing in the predicted interference area are viewers of PBS programming, they are much more likely to watch Station WJSK-DT, rather than attempt to view the substantially weaker PBS signal of distant Station WUNF-DT.¹⁰ *Id.* at 3.

Appendix A also demonstrates that the proposed Knoxville station would cause even less predicted interference to WUNF-DT after the end of the transition period. If the proposed Knoxville station were to operate as a maximized digital facility on Channel 25 after the end of the transition period, it would cause only 0.12% predicted interference to WUNF-DT's authorized facilities and 0.06% predicted interference to the facilities specified in the station's pending modification application. *See* Appendix A, p. 3 and Exhibits H and I. These predicted interference levels are negligible and well below the Commission's rounding tolerance.

III. There is Good Cause for the Acceptance of This Further Supplement.

As stated in their initial Petition, Petitioners have mutually exclusive applications pending for a construction permit for a new television station to operate on Channel 26 at Knoxville. Petitioners' applications were filed with the FCC on April 5, 1989, September 13, 1989, and September 20, 1996, respectively.¹¹ Subsequent to the filing of their applications, Congress amended the Communications Act of 1934, as amended, by adding

⁹ Stations WUNF-DT and WJSK-DT have not commenced on-air operation and are not required to do so until May 1, 2003.

¹⁰ To the extent that WUNF-DT may carry some other programming in addition to its basic PBS fare, it is reasonable to assume that it would be local and/or state-oriented, and neither directed at nor of significant interest to the Tennessee residents in the minimal interference areas in question.

¹¹ *See* File Nos. BPCT-19890405KF; BPCT-19890913KG; and BPCT-19960920LJ. Thus, two of the mutually exclusive applications have been pending before the FCC for over 12 years.

Section 309(1) which directs the Commission to waive its rules to encourage settlements among mutually exclusive broadcast applicants.¹² Accordingly, on January 28, 1998, Petitioners filed a “Joint Request for Approval of Universal Settlement” (“Joint Request”), requesting the approval of a settlement proposal which contemplates the grant of KC25’s application and the dismissal of SWMM’s and Channel 26, Ltd.’s pending applications. Petitioners’ Joint Request has remained pending before the FCC for nearly four years.

As demonstrated in their Petition, Petitioners seek to substitute Channel 25 for the existing Channel 26 NTSC allotment at Knoxville due to the allotment of DTV Channel 26 at Knoxville. As part of their initial allotment proposal, Petitioners demonstrated the requisite interference protection to Station WUNF-DT, Asheville, by way of a requested waiver of the maximum-to-minimum ratio contained in Section 73.685(e) of the Commission’s rules.¹³ The pending modification application for WUNF-DT was not filed until July 31, 2001 (*See* File No. BMPEDT-20010731AAG), more than a year after the close of the filing window for amending pending NTSC proposals and almost a month after Petitioners filed their Initial Supplement herein. Therefore, Petitioners have not had an opportunity to demonstrate that the proposed allotment of Channel 25 at Knoxville would not cause prohibited interference to the facilities specified in WUNF-DT’s pending modification application. In light of this fact and the substantial public interest benefits that would result from the proposed new NTSC station at Knoxville (discussed in greater detail below), Petitioners respectfully submit that there is good cause for the acceptance of this further supplement.

¹² *See* 47 U.S.C. §309(1).

¹³ *See* Petition for Rulemaking, p. 12, n.19 and Engineering Statement, p. 5.

IV. Section 309(l) of the Communications Act Requires the FCC to Waive Its Technical Rules in Order to Facilitate the Grant of the Pending Allotment and Settlement Proposals.

Section 309(l) of the Communications Act provides that with respect to competing applications for new broadcast stations that were filed before July 1, 1997, the Commission shall:

waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.

47 U.S.C. §309(l)(3) (emphasis added). As stated above, Petitioners filed their mutually exclusive applications no later than September 20, 1996, and filed their settlement proposal on January 28, 1998, which was prior to the 180-day statutory deadline set forth in the Balanced Budget Act of 1997 (“1997 Budget Act”).¹⁴ Therefore, Petitioners respectfully submit that, pursuant to Congress’ explicit directive to the FCC that it waive any of its rules necessary to permit parties to effectuate a settlement proposal filed pursuant to the 1997 Budget Act, the Commission is lawfully compelled to grant their request for a waiver of the maximum-to-minimum ratio contained in Section 73.685(e) of the Commission’s rules. That result is particularly commended in this exceptional context in that no public or private interest can reasonably be materially adversely effected by a grant of such waiver request. Indeed, as demonstrated in Petitioners’ Petition, the Commission previously has waived its technical rules in the allotment context where, as in this case, a grant of the requested waiver would result in substantial public interest benefits.¹⁵

¹⁴ Pub. L. No. 105-33, 111 Stat. 251 (1997).

¹⁵ See *Interim Policy on VHF Television Channel Assignments*, 21 RR 1695 (1961) (Commission found that short-spaced allotment stations could provide “equivalent protection” to existing stations by reducing their effective radiated power, using a reduced antenna height, using a directional antenna, or employing a combination of these techniques), *recon. denied*, 21 RR 1710a (1961); *Petition for Rule Making to Amend* (footnote continued on next page)

As demonstrated in the Petition, the proposed allotment of Channel 25 to Knoxville would provide substantial public interest benefits, including the following: (i) bring a new local television service and new network service to 931,082 viewers in the Knoxville area, (ii) help foster the development of emerging new television networks by providing an additional competitive broadcast outlet in a top 100 television market¹⁶ with which to establish a primary affiliation,¹⁷ (iii) promote ownership diversity in the Knoxville television market, and (iv) increase competition in the local advertising market. Indeed, in light of the Commission's relaxation of the local television ownership rule and the increasing consolidation in the broadcast industry, the public interest benefits that would result from Petitioners' allotment proposal have even more importance in today's broadcast environment than those that existed at the time the *Interim Policy* and *VHF Top 100 Markets* were adopted.

V. Conclusion.

As demonstrated herein, the proposed allotment of NTSC Channel 25 to Knoxville is predicted to cause no more than negligible interference, if any, to the facilities authorized by the existing construction permit for Station WUNF-DT as well as those

Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming, BC Docket No. 20418, *Report and Order*, 81 FCC 2d 233 (1980) ("VHF Top 100 Markets") (because the Commission required the drop-ins to provide equivalent protection, the potential interference to existing short-spaced stations would be no greater than any other allotment that had been made since the Table was created), *recon. denied*, 90 FCC 2d 160 (1982), *aff'd sub nom. Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620 (10th Cir. 1983).

¹⁶ The Knoxville market currently is ranked as the 63rd television market. See *Broadcasting & Cable*, p. B-197 (2001).

¹⁷ Petitioners have previously demonstrated the compelling need that emerging new networks (*e.g.*, The WB Television Network, United Paramount Network, *etc.*) have for full-power affiliate outlets in major television markets. See Petition, p. 8, n. 16.

facilities specified in the station's pending modification application. Moreover, it is very unlikely that any of those persons residing within such potential interference area would, in fact, be adversely affected by the proposed Knoxville NTSC station given the essentially duplicative and far stronger signal of Station WSJK-DT, Sneedville, Tennessee, which is substantially closer to the potential interference area.

Furthermore, because Petitioners' settlement proposal was filed pursuant to the 1997 Budget Act, the FCC is required to waive its rules in processing the pending settlement proposal and accompanying allotment request. Therefore, consistent with Section 309(l) of the Communications Act, the Commission should waive the suppression ratio contained in Section 73.685(e) of its rules with respect to Petitioners' proposed directional antenna pattern.

Finally, as shown herein, the proposed new television station at Knoxville would provide substantial public interest benefits that would extend far beyond the proposed service area. The new NTSC station not only would bring a new television and new network service to nearly one million people in the Knoxville area, but it would help promote emerging new networks by providing a new full-power station with which to affiliate in a top 100 market, and thereby enable one of the emerging networks to strengthen its competitive posture *vis-à-vis* the major television networks.

WHEREFORE, in light of the foregoing, SWMM/Knoxville Corporation, Channel 26, Ltd., and Knoxville Channel 25, L.L.C. respectfully request that the Commission ACCEPT this further supplement, GRANT their pending Petition for Rulemaking, and AMEND the TV Table of Allotments by substituting NTSC Channel 25, or, alternatively, DTV Channel 7, for the existing Channel 26 NTSC allotment at Knoxville, Tennessee.

Respectfully submitted,

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